FINAL RULE DEVELOPMENT 2002

Below are summaries of selected, ***final*** rule changes that were published in the *Federal Register* on November 1, 2002. These new regulations were developed during negotiated rulemaking discussions that occurred in the spring of 2002.

Action was deferred on certain other topics identified below in favor of development outside of the negotiated rulemaking process, e.g., via *Federal Student Aid Handbook* guidance or amendment of the Higher Education Act (HEA). In cases when a topic was addressed in a manner other than regulatory development, the "Final Rule Summary" for a particular topic states "None", followed by a summary of the issue and a brief explanation of the manner in which the U. S. Department of Education (USDE) addressed it.

Interested parties should refer to the final rules in the *Federal Register* dated November 1, 2002, and the Notice of Proposed Rulemaking (NPRM) in the *Federal Register* dated August 6, 2002, for more information about changes that are specific to Federal Work Study (FWS), the Federal Direct Loan Program, the Federal Perkins Loan Program, and the GEAR-UP Program.

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12-HOUR RULE*	November 1, 2002 p. 67050-67053, 67071-67072, 67080 August 8, 2002 (NPRM) p. 51720-51721, 51735-517386 34 CFR 668.2 34 CFR 668.3 (new) 34 CFR 668.4 34 CFR 668.8(b) 34 CFR 682.603(f)	The current statutory definition of an academic year requires at least 30 instructional weeks in which, for undergraduate programs, the student completes at least 24 semester or trimester credit hours, 36 quarter credit hours, or 900 clock hours. Final rules eliminate the requirement that, for non-standard term and non-term programs, an instructional week must include at least 12 hours of instruction, examination or after the last day of classes, preparation for final examinations. Now, the measure of an instructional week will be the same for all program types: a week of instruction must include at least *one day* of regularly scheduled instruction or examination, or, after the last day of classes, at least one day of study in preparation for final examinations. Conforming changes are made to the definition of an academic year, and the academic year definition will be moved from 668.2 to a new 668.3.	Many schools are now offering programs in shorter time periods that may also have overlapping terms and rolling starting dates. For many of the new non-standard or non-term educational programs, compliance with the 12-hour rule has become increasingly at odds with flexible program formats that schools are now offering to, in particular, non-traditional students. The USDE declined to limit institutional flexibility by establishing a rigid definition of how many hours of instructional time must be considered a day of instruction. The measure should be whether the school can demonstrate that the activities that make up a day of instruction are reasonable in both content and time. The USDE defers to the school's accrediting agency in this regard.	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.
50% GRANT PROTECTION *(A reduction of the amount of unearned grant assistance a*	N/A	None. The financial aid community asked USDE to clarify the 50% grant protection, asserting that the amount of grant assistance a withdrawn student received should be	N/A	N/A

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withdrawn student is required to repay to the Title IV programs.)		reduced by 50% and then subtracted from the total amount the student's repayment amount. However, the USDE concluded during negotiated rulemaking discussions that the HEA does not permit the expansion of this statutory provision. Federal legislation introduced in the House on January 7, 2003, and in the Senate on April 11, 2003 (H.R. 12 and S.901, the Higher Education Technical Amendments of 2003) apply the 50% grant protection to the amount of grant assistance the student received for the payment period or period of enrollment. In addition, the proposed legislation applies the new grant protection definition to academic years on or after July 1, 2003, or on the date the school implemented the change if the school implemented it earlier.		
50% RULE *(A Title IV institutional eligibility issue for schools that offer correspondence and telecom-munications courses.)*	N/A	None. The USDE was asked to clarify the 50% rule as it relates to correspondence and telecommunications courses. The current rule states that a school is NOT eligible for Title IV participation if, during the school's latest complete award year: • More than 50% of its courses were taught through correspondence* • More than 50% of its regular students are enrolled in correspondence courses **Telecommunications* courses may be considered correspondence if the sum of telecommunications and other correspondence courses the school provided during its latest complete award year was equal to or more than 50% of the total courses provided that year. However, no regulatory changes will be made since the USDE believes that regulations accurately reflect the HEA. Instead, the USDE provided additional clarification in the 2003-04 federal *Student Financial Aid Handbook,* Volume 1 – Institutional Eligibility and Participation, Chapter 12.	N/A	N/A
ABILITY-TO-	November 1, 2002	Previously, an otherwise eligible student who did not	Schools requested this change,	Generally, July 1,

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BENEFIT (ATB) TESTS	p. 67058, 67073 August 8, 2002 (NPRM) p. 51728, 51738 668.32(e)(2) 34 CFR 668.151(a)(2)	have a high school diploma or its recognized equivalent and who did not meet home-school eligibility criteria qualified for Title IV assistance only if the student obtained a passing score on a USDE-approved ATB test. Schools could accept a passing score on an approved ATB test that the student received within no more than a 12-month period prior to receiving Title IV aid. Final rules eliminate any limit on the duration of a passing score for an approved ATB test. However, the school must obtain the results of an approved ATB test directly from either the test publisher or the assessment center that administered the test.	asserting that one of the alternatives to a passing score on an approved ATB test is a high school diploma or its equivalent, but neither the diploma nor its equivalent expires after a certain period of time.	2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.
BRANCH CAMPUSES	November 1, 2002 p. 67070 August 8, 2002 (NPRM) p. 51720, 51735 34 CFR 600.8	Final rules clarify that only the branch campus of an eligible proprietary or postsecondary vocational institution must be in existence for at least two years after certification before applying for eligibility as a main campus or freestanding institution.	A single public or non-profit institution can be both an institution of higher education (as defined in 600.4 of the regulations) and a postsecondary vocational institution, depending on the programs it offers. In such a case, the "two year rule" would apply if the school wanted a branch campus that offered vocational programs of less than one year to become a free-standing institution.	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.
CHANGE OF OWNERSHIP	November 1, 2002 p. 67050, 67070-67071 August 8, 2002 (NPRM) p. 51720, 51735 34 CFR 600.21(f) 34 CFR 600.31(e)	Final rules modify the circumstances in which a change in ownership and control does not adversely affect a school's eligibility status: • Ownership transfer to a family member, now defined as any of the following: √ Parent or stepparent √ Sibling or step-sibling √ Spouse √ Child or stepchild √ Grandchild or step-grandchild √ Spouse's parent or stepparent √ Spouse-s sibling or step-sibling √ Spouse's child or stepchild √ Spouse's grandchild or step-grandchild √ Child's spouse	Any ownership transfer that does not affect the school's eligibility status must nevertheless be reported to the USDE to keep the USDE's records updated.	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.

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		√ Sibling's spouse An ownership transfer to a family member is no longer restricted to cases when the owner retires or dies. • Upon the owner's retirement or death, ownership transfer to a person who has been in management and maintained an ownership interest [as defined in 600.31(b)] in the school for at least the prior two years		
CONSOLIDATION LOANS **See "Death Discharge", "Disability Discharge (*Consolidation Loans*)"and "Disability Discharge (*Guarantor Review Period*)"**				
COST OF ATTENDANCE *(Computer Rental or Purchase)*	N/A	None. The financial aid community asked USDE to clarify in regulations that it is permissible to include as a cost of attendance component the rental or purchase of a computer when it occurs before the start of an award year. However, USDE declined to do so, citing a provision in the HEA that specifically prohibits USDE from regulating in the areas of need analysis and cost of attendance. Instead, the USDE included the following clarification in the 2002-03 federal *Student Financial Aid Handbook*, Volume 1 – Student Eligibility, on page 1-118: A student's cost of attendance…can include a reasonable amount, as determined by your school, for the documented rental or purchase of a personal computer that the student will use for	N/A	N/A

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		study for the enrollment period. For example, a computer purchased in the summer for use in the fall term may be included.		
COUNSELING *(Entrance and Exit)*	November 1, 2002 p. 67065-67066, 67080-67081 August 6, 2002 (NPRM) p. 51039, 51054-51055 34 CFR 682.604(f)(1) – (3) 34 CFR 682.604(g)(1) – (3)	Final rules provide clarification and parity across all Title IV loan programs: • Codifies prior USDE guidance that allows a party other than the school to conduct counseling. The school must ensure that the counseling is provided, that it contains all required information, and that someone familiar with Title IV programs is available shortly after the counseling to answer questions. • Incorporates a *new entrance* counseling requirement for a school to provide information about sample monthly repayment amounts based on a range of student indebtedness levels or average indebtedness of Stafford borrowers at the same school or in the same program at the same school. • Incorporates a *new exit* counseling requirement for the school to provide information about the availability of the National Student Loan Data System (NSLDS).	No notable discussion.	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.
DEATH DISCHARGE	November 1, 2002 p. 67067-67069, 67079 August 6, 2002 (NPRM) p. 51040-51041, 51053-51054 34 CFR 682.402(a)(2), (b)(6), (k)(2)(iii)	Final rules expand a borrower's eligibility for partial discharge of a Consolidation Loan in the following cases: • Upon the death of a dependent student for whom an underlying PLUS loan was made. The discharged amount is the portion of the Consolidation Loan attributable to the Federal or Direct PLUS loan as of the date of the dependent's death. • Upon the death of one of two borrowers of a spousal Consolidation Loan. The discharged amount is equal to the portion of the Consolidation Loan's outstanding balance, as of the date the borrower died, attributable to any of the deceased borrower's underlying loans that would otherwise have been eligible for discharge.	The USDE declined to accept a commenter's suggestion that these and other consolidation loan benefits be applied only to borrowers of new consolidation loans on or after July 1, 2003. Instead, the USDE stated that borrowers should be permitted to receive discharges for which they would have qualified if they had not consolidated their loans. A borrower may qualify for a discharge under the final rules regardless of when the consolidation loan was made or when the discharge condition was met, provided that the borrower has an outstanding balance on the consolidation loan at the time discharge is requested. The USDE does *not* expect guarantors to identify	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes. Also see "NPRM or Final Rule Preamble Discussion" for this topic, second paragraph.

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		(Note that these benefits do not apply to co-made Federal PLUS loans.) The requirement that both joint Federal Consolidation Loan borrowers qualify for discharge in order for a guarantor to receive insurance was deleted from the regulations.	consolidation loan borrowers who were not eligible to receive loan discharges in the past but might now qualify under the new rules. Procedures for claim filing when only one of two joint consolidation loan borrowers qualifies for discharge will be the same as procedures for claim filing on a joint consolidation loan when the loan is partially discharged due to closed school, false certification, or unpaid refund. Payments received after a joint consolidation loan borrower's death should be reapplied to reduce any remaining consolidation loan balance. If there is no remaining balance after the discharge, payments received after the borrower's death should be returned to the borrower's estate. Payments received after the borrower's death should be reflected in the discharge amount.	
DEFERMENT *(Economic hardship)*	November 1, 2002 p. 67078-67079 August 6, 2002 (NPRM) p. 51039, 51053 34 CFR 682.210(s)(6)(vii) and (ix)	Final rules modify criteria loan holders use to establish loan debt burden for economic hardship deferment applicants: • If the loan is scheduled to be repaid in 10 years or less, the holder must use the borrower's actual monthly payment amount (new). • If the borrower's actual repayment term is more than 10 years, the holder must use an adjusted monthly payment amount based on a 10-year repayment term (in effect previously, per Section 5 of the Economic Hardship deferment form). • To qualify for subsequent deferment periods, lenders are no longer required to obtain evidence of monthly payments that the borrower would have made to other entities for federal postsecondary education loans during the deferment period. Now,	Borrowers in all three Title IV loan programs with repayment terms of less than ten years will no longer be penalized by the use of a monthly payment amount, based on a ten year repayment term, that is less than their actual monthly payment amount.	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes. If early implementation was chosen, and until the USDE published a revised economic hardship deferment form (posted March 14, 2003), loan holders must have established

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		the lender can accept evidence of the borrower's monthly income or a copy of the borrower's most recently filed tax return.		alternative methods for borrowers to provide loan detail needed to perform the eligibility calculation using the new formula.
DEFERMENT SIMPLIFICATION *(Unemployment deferment documentation)*	November 1, 2002 p. 67067, 67078-67079 August 6, 2002 (NPRM) p. 51040, 51052-51053 34 CFR 682.210(h)(2) – (4)	Documentation requirements are simplified for a borrower who applies for unemployment deferment based on a diligent search for full-time employment. Regulations now allow the borrower to self-certify in writing (or an equivalent that the USDE approves) that he or she has performed the following: • Six diligent attempts to secure full-time employment during the past six months. The need to provide detail of those contacts is eliminated. • Registration with a local employment agency within 50 miles of the borrower's current (vs. permanent or temporary) address. The need to provide employment agency name/address and a registration date is eliminated. The requirement for a borrower to provide his or her current or temporary residential address as a condition of deferment eligibility is deleted. However, this remains a condition of the FFEL Program loan promissory note, i.e., the borrower is required to keep the lender updated on any change of address.. The USDE added language that will allow for future consideration of a written certification equivalent (e.g., verbal or automated), provided those methods protect program integrity.	As a general rule, the term "written certification" also includes electronically submitted certifications. The USDE declined a commenter's request to eliminate the requirement for the borrower's written self-certification, stating that even if an equivalent was approved that did not need to be in writing, the other requirement for a written certification need not be undone. Also see "Electronic Issues."	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes. If early implementation was chosen, and until the USDE published a revised economic hardship deferment form (posted March 14, 2003), loan holders must have established alternative methods for borrowers to certify eligibility under the new rules.
DISABILITY DISCHARGE (*Consolidation Loans*)	November 1, 2002 p. 67067-67069, 67079 August 6, 2002 (NPRM) p. 51040-51041, 51053-51054	If one of two joint Consolidation Loan borrowers becomes totally and permanent disabled, final rules allow for partial discharge of the Consolidation loan. The discharged amount is equal to the portion of the Consolidation Loan's outstanding balance that is attributable to any of the disabled borrower's underlying loans that would have been eligible for discharge had the borrower not consolidated.	In NPRM preamble discussion, the USDE declined to make regulatory changes that would allow for the partial discharge of a Consolidation Loan based on a total and permanent disability when a borrower meets the requirements for discharge on some, but not all, of the loans that were consolidated.	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.

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	34 CFR 682.402(a)(2) 34 CFR 682.402(k)(2)(iii)	(Note that these benefits do not apply to co-made Federal PLUS loans.) The following conforming changes were made: • Final rule language deletes the requirement that, in order for a guarantor to receive reinsurance, both joint borrowers must qualify for discharge. • A technical change was made that eliminates references to disability determinations made by guarantors, since the USDE now has sole authority for making final discharge eligibility determinations.	In Final Rule preamble discussion, the USDE declined to accept a commenter's suggestion that the new consolidation loan benefits be applied only to borrowers of new consolidation loans on or after July 1, 2003. Instead, the USDE stated that borrowers should be permitted to receive discharges for which they would have qualified if they had not consolidated their loans. A borrower may qualify for a discharge under the final rules regardless of when the consolidation loan was made or when the discharge condition was met, provided that the borrower has an outstanding balance on the consolidation loan at the time discharge is requested. *In the case of a partial discharge of a joint consolidation loan for a reason other than the death of one of the borrowers,* ***both borrowers remain jointly and severally liable*** *for the remaining balance of the loan, as is the case under current regulations for consolidation loans that are partially discharged because one of two joint borrowers meets the conditions for closed school, false certification, or unpaid refund discharge.* Procedures for claim filing when only one of two joint consolidation loan borrowers qualifies for discharge will be the same as procedures for claim filing on a joint consolidation loan when the loan is partially discharged due to closed school, false certification, or unpaid refund.	Also see "NPRM or Final Rule Preamble Discussion" for this topic, second paragraph.

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			Payments received after a joint consolidation loan borrower's disability date should be reapplied to reduce any remaining consolidation loan balance. If there is no remaining balance after the discharge, payments received after the joint borrower's disability date should be returned to the disabled borrower. Payments received after the disability date should be reflected in the discharge amount. USDE will work with lenders, servicers, and guarantors to address procedures for assigning a joint consolidation loan to the USDE when, under the new rules, one of the borrowers preliminarily qualifies for total and permanent disability discharge.	
DISABILITY DISCHARGE (*Guarantor Review Period*)	November 1, 2002 p. 67080 August 6, 2002 (NPRM) p. 51045, 51054 34 CFR 682.402(h)(1)(i)(B)	The time frame for guarantor review and payment or denial of a total and permanent disability discharge request is extended from 45 to 90 days.	Guarantors need additional time to provide rigorous and careful review of a total and permanent disability discharge request. In Dear Colleague Letter G-02-334 dated May 2002, the USDE stated that it would not hold a guarantor liable if it paid or returned a total and permanent disability claim request within 90 days since the expansion of the time frame was under consideration as a proposed rule change.	Generally, July 1, 2003. However, the MSLP implemented this review time frame extension on an as needed basis, as authorized by Dear Colleague Letter G-02-334 dated May 2002. Also see "NPRM or Final Rule Preamble Discussion" for this topic.
ELECTRONIC ISSUES **Also see "Notices", and "Deferment Simplification" under the category "NPRM or Final Rule Preamble Discussion."**	N/A	During negotiated rulemaking discussion, the USDE clarified that, unless a regulation specifies that a paper format must be used, communications may be accomplished electronically. Participants must adhere to security and disclosure requirements of current laws, including the HEA and the Electronic Signatures in Global and National Commerce Act. For FFEL Program loan holders that offer a process for electronically signed promissory notes, the USDE has	Also see "Notices", and "Deferment Simplification" under the category "NPRM or Final Rule Preamble Discussion."	N/A

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		issued ***voluntary*** *Standards for Electronic Signatures in Electronic Student Loan Transactions,* which a loan holder may adopt at its discretion. The USDE has issued some additional guidance for a school's use of electronics for Title IV program administration in the 2003-04 federal *Student Financial Aid Handbook*, Volume 2 – Institutional Eligibility and Participation, on page 2-103.		
ELIGIBILITY (PROGRAM/ SCHOOL) **See "50% rule…" and "12-hour" rule above.**				
ELIGIBILITY (STUDENT)	N/A	None. The financial aid community requested that USDE establish uniform standards across all Title IV programs for the treatment of students who regain eligibility during an enrollment period. Currently, a FFEL or Federal Direct Loan Program borrower regains eligibility retroactive to the beginning of the *enrollment period* in which the eligibility issue was resolved. For Pell and campus-based programs, eligibility is restored retroactive to the beginning of the *payment period* in which the eligibility issue is resolved. The USDE declined to change its policy at this time, but promised to review the issue.	N/A	N/A
FIRST PAYMENT DUE DATE	November 1, 2002 p. 67078 August 6, 2002 (NPRM) p. 51044, 51052 34 CFR 682.209(a)(3)	For the original conversion to repayment and subsequent reconversion after deferment or forbearance, this change extends the maximum time frame for establishing the first payment due date on a Stafford Loan from 45 to 60 days, consistent with the requirements for SLS, PLUS, and Consolidation loans.	No notable discussion.	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.
FORBEARANCE (ADMINISTRATIVE)	November 1, 2002 p. 67079	Previously, a lender was permitted to grant administrative forbearance, with notice to the borrower,	No notable discussion.	Generally, July 1, 2003. However, the

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	August 6, 2002 (NPRM) 51044-51045, 51053 34 CFR 682.211(f)	for no more than three months in cases when a borrower is affected by a natural disaster. This type of forbearance does not require the borrower's request or a written forbearance agreement. Now, a lender's discretionary authority to grant administrative forbearance is expanded in two additional cases: • Local or national emergency declared by the appropriate government agency • Military mobilization This discretionary authority is added to regulation in an effort to address delays in guidance and forbearance authority issued by the USDE in circumstances such as the 9-11-01 terrorist attacks.		USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.
FORBEARANCE SIMPLIFICATION	November 1, 2002 p. 67079 August 6, 2002 (NPRM) 51044-51045, 51053 34 CFR 682.211(b), (c), (e), (h)	Previously, a lender was permitted to grant a discretionary forbearance if the borrower and a lending official agreed to the terms of the forbearance in writing. Final rules eliminate the need for a written agreement. However, when the forbearance agreement between borrower and lender is not in writing, the lender must notify the borrower of forbearance terms within 30 days. The time frame for a lender's reminder to the borrower about his or her obligation to repay during forbearance periods is modified from quarterly to semi-annually. The lender's reminder must now include all of the following: • The amount of interest that has accrued during the forbearance to date • The fact that interest will continue to accrue during the full forbearance term • Notice of the borrower's option to discontinue the forbearance at any time Regulations continue to reflect statutes that require a written agreement between the borrower and lender for certain mandatory forbearance types, e.g., medical or dental internship or residency, and loan debt burden.	No notable discussion.	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.

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HOME-SCHOOLED STUDENTS	N/A	None. The financial assistance community requested that the USDE make institutional requirements for Title IV eligibility consistent with student eligibility requirements relating to home-schooled students. The USDE declined, stating that current regulations are based on specific provisions of the Higher Education Act. However, in November of 2002, the USDE published guidance in Dear Colleague Letter GEN-02-11 to clarify its current position: a school does not jeopardize its eligibility to participate in the Title IV programs if it admits as a regular student one who has completed a home schooling program and is exempted from further secondary school attendance in the ***state in which the school is located***, even if the student is younger than the state's compulsory school attendance age. (In Missouri, compulsory school attendance ends when the student reaches his or her 16th birthday.) This guidance is reiterated in the 2002-03 federal *Student Financial Aid Handbook*, Volume 1 – Student Eligibility, on page 1-5, and Volume 2 – Institutional Eligibility and Participation, on page 2-6. Please note that the standard for determining a home-schooled student's eligibility for Title IV assistance is based not on law in the state in which the school was located, but rather on law in the ***state in which the student was home-schooled***. In order for a home-schooled student to establish eligibility for Title IV assistance, the school must determine that the student either received a home-school completion credential issued by the state in which the student was home schooled, or if the state does not issue such a credential, the student completed home-schooling in a state that exempted the student from compulsory school attendance laws. A school may accept a student's self-certification that he or she meets applicable requirements for home-schooled students.	N/A	N/A

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INCENTIVE COMPENSATION*	November 1, 2002 p. 67053-67057, 67072-67073 August 8, 2002 (NPRM) p. 51722-51725, 51737 34 CFR 668.14(b)(22)	Final rules clarify prohibitions on providing incentive compensation based on success in securing enrollments or financial aid by establishing new safe harbors for schools. The actions a school may take without violating existing laws on incentive compensation are summarized below. • Adjusting compensation: Within a twelve month period, two salary adjustments and a cost of living increase. The cost of living increase must be paid to substantially all of the school's full-time employees, and the salary adjustment(s) must not be based solely on the number of students recruited, admitted, or awarded financial aid • Payments to recruiters and others based on enrollment of students in programs that are not Title IV eligible • Compensating recruiters who arrange contracts with employers whose employees enroll in the institution's programs. The employer must provide more than 50% of the tuition and fees the school charges, the compensation cannot be based on the number of employees who enroll or the revenue they generate, and the recruiters must have no contact with the employees • Profit-sharing or bonus payments made to all or substantially all of the school's full-time professional and administrative staff, provided the payments are substantially the same amount or based on the same percentage of salary. Payments may be made to employees at the same organizational level, provided that organizational level does not consist predominantly of recruiters, admissions staff, or financial aid staff • Compensation based on students' successful completion of their educational program, or one year of their academic programs, whichever is shorter. For this purpose, successful completion of	In the final rule preamble, USDE discusses its intent in establishing these regulatory safe harbors. The USDE believes that Congress enacted the statutory provisions prohibiting incentive compensation in order to prevent a school from providing incentives to staff for enrolling unqualified students. However, the USDE determined that various payment arrangements constituted legitimate business practices that did not support the enrollment of unqualified students and therefore did not fall within the scope of statutory prohibitions. Making these determinations is within the scope of the USDE's authority for interpreting the statutes it is responsible for administering. USDE declined to adopt a commenter's suggestion to set forth penalties that apply if a school violates the incentive compensation prohibitions, stating that the request was outside the development scope of these regulations. Selected final rule preamble discussion and clarification is presented by topic below. *Adjustments to Employee Compensation*: • USDE believes that if an employer has a written policy that indicates that cost of living increases are denied to poorly performing employees, that policy would not disqualify cost of living increases from being treated in the manner described in this safe harbor,	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.

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		an academic year means that the student has earned at least 24 semester or trimester credit hours or 36 quarter credit hours, or has successfully completed at least 900 clock hours of instruction at the institution. • Compensating employees engaged in pre-enrollment activities, such as answering telephone calls, referring inquiries, or distributing school materials • Token gifts provided to the school's students or alumni, provided the gifts are not money, there is no more than one gift annually, and the cost of the gift is less than $100 • Distributing profit proportionately based on an individual's ownership interest in the school • Compensating a provider for internet-based recruitment and admission services that provide information about the school to prospective students, refer prospective students to the school and permit prospective students to apply on-line • Payments to third parties for non-recruitment activities (e.g., instruction, curricula, and course materials) • Payments made to outside entities with whom the school contracts for recruitment, admissions, enrollment or financial aid services are permissible provided the entity is compensated in a way that would otherwise be permissible under the safe harbor standards	unless the policy had the effect of no longer applying the cost of living increase to "all or substantially all" of its employees, and other relevant factors reveal the increase to be tied to student recruitment and not within any of the prescribed safe harbors. • USDE agreed with commenters who pointed out that employers often treat part-time employees differently than full-time employees for the purposes of cost of living increases. Therefore, the USDE changed the final rules to reflect that cost of living increases that are given to all or substantially all of a school's full-time employees will not be considered a prohibited compensation adjustment. *Contracts with Employers*: One commenter noted that no one could satisfy the proposed safe harbor since recruiters had to contact employers in order to negotiate a contract. However, the USDE stated that the prohibited contact does not include the contact necessary to obtain the contract. *Profit-Sharing or Bonus Payments*: • USDE provided clarification regarding the safe harbor allowing a profit sharing plan to be limited to employees in an "organizational level" rather than to the institution as a whole. For this safe harbor, an "organizational level" at a multi-school institution would be one of the schools. • USDE incorporated an NPRM	

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			preamble comment into regulations: the safe harbor only applies if the profit sharing or bonus payment is substantially the same amount or the same percentage of salary or wages. A school does have the flexibility to provide different percentages of compensation based on employees' organizational levels. *Compensation Based on Program Completion or One Academic Year, Whichever is Shorter:* • The appropriate measure of whether a student completes one academic year is by determining whether the student has completed one academic year of *credit* rather than whether the student has completed an increment of time. • Changes made to the final rules clarify that all of the credits must have been earned as the result of *taking courses at the institution*. This safe harbor applies when the student earns an academic year's worth of credits (at least 24 semester or trimester credit hours, 36 quarter credit hours or 900 clock hours of instruction) regardless of how short or long a time that takes. • A school may choose to pay a recruiter a bonus for each academic year the student completes in a multi-year program and be in compliance with the safe harbor. *Pre-Enrollment Activities* • USDE believes that one of the most important criterion for	

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			inclusion in this safe harbor is the clerical nature of pre-enrollment activities that are being performed. Final rule changes add a non-inclusive list of clerical tasks that are covered under this safe harbor to draw a clearer line between recruiting and pre-enrollment activities. • USDE reiterated its belief that soliciting students for interviews is a core recruiting activity, and therefore, not covered as a pre-enrollment activity under this safe harbor provision. • Buying leads to potential students from third parties for a flat fee is NOT providing a commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments. *Payments to Third Parties for Non-Recruitment Activities* USDE agreed with a commenter that the contract services of a third party for advertising or marketing are not considered recruiting activities and are therefore not prohibited.	
INELIGIBLE BORROWERS	N/A	None. Representatives of the FFEL Program community requested that the USDE increase the lender's insurance percentage on an ineligible borrower claim from 98% to 100%, and increase the guarantor's reinsurance percentage from 95% to 100%. The USDE disagrees with this interpretation of the reinsurance percentage on ineligible borrower claims and declined to advance the position advocated by FFEL Program representatives.	N/A	N/A
LAST DATE OF (AT LEAST HALF-TIME)	November 2, 2002 p. 67078	The final rule reinforces existing policy per DCL 96-L-186: a lender must use a new less than half-time date	No notable discussion.	Generally, July 1, 2003. However, the

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ATTENDANCE	August 6, 2002 (NPRM) p. 51044, 51052 34 CFR 682.209(a)(3)(iii)	the school reports, unless the lender has already disclosed repayment terms to the borrower and the new date is within the same month and year as the most recent date reported to the lender.		USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.
LATE DISBURSEMENT	November 1, 2002 p. 67062, 67073-67074 August 8, 2002 (NPRM) p. 51728-51729, 51738 34 CFR 668.164(g)	USDE made the following changes to the late disbursement rules: • The USDE must have *processed* a SAR or ISIR with an official EFC while the student was still eligible in order for a school to make a late delivery. A school may not make a delivery of Federal Pell Grant funds unless it received a valid SAR or ISIR by the USDE-established deadline date published in the *Federal Register*. • The previous requirement for a school to have received a SAR or ISIR with an official EFC before making a late delivery of PLUS loan funds is eliminated. This change is most notable in cases when the only type of Title IV assistance a student receives is PLUS loan, since a completed FAFSA is not required (unless the school's written policy requires it in all cases). • Previously, schools had the option of making a late disbursement. In the case of a student who completes the payment period or enrollment period, final rules permit the school to credit the student's account with funds from a late disbursement up to the amount of outstanding allowable charges, but ***require*** the school to offer any remaining funds to the student or parent borrower. This change makes the school's obligation in the case of a student who completes the payment period or period of enrollment similar to its obligation to offer a post-withdrawal disbursement to a withdrawn student who has earned more Title IV funds than he or she received.	Regarding the change that requires a SAR or ISIR with an official EFC to have been processed by the USDE before the date a student became ineligible: • Each SAR or ISIR includes a date that the USDE processed the application and created the SAR/ISIR. • A school must have ***received*** the SAR or ISIR before making a late delivery of ***Pell Grant*** funds. In response to proposed rule commenters, the USDE reasserted its position that it, not a guarantor, is the most appropriate party to determine whether to approve a late disbursement after the established deadline. From a policy and operational perspective, USDE wishes to be aware of the frequency and circumstances in which exceptions to the new 120-day late disbursement deadline are used. USDE is presently working with the industry to develop a procedure for approving late disbursement requests, including a single point of contact. A school that makes such a request must provide USDE with all of the following: • The student's name, or in the case	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.

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		• The deadline for late delivery is expanded from the previous 90 days to 120 days after either of the following: ✓ For a withdrawn student, the date the school determined that the student withdrew ✓ For a student who becomes ineligible for other reasons (e.g., the student completes the enrollment period or drops to less than half-time status), the date the student became otherwise ineligible Final rules codify exiting USDE policy, permitting late delivery after the new 120-day deadline in exceptional circumstances that are no fault of the student. An appeal to the maximum late delivery time frame must come from the school. Under USDE's previous private guidance, guarantors were allowed to authorize late delivery after the maximum time frame. However, under the final rules, ***only USDE*** may grant a school's request to make a late delivery after 120 days.	of a PLUS loan, the parent's name • The type and amount of Title IV aid to be disbursed • A description of the circumstances that resulted in the disbursement not being made, including why the disbursement was not made, and why it was not the fault of the student or parent borrower. The USDE expects the school to retain documentation of its request and of the USDE's response. In the final rule preamble, USDE reaffirms its position that, because the student earned the funds for the period completed, it is up to the student, not the school, to decide whether a late disbursement is needed. If a school believes a late disbursement is not needed or is concerned that a late disbursement of a loan may increase the risk of default, the USDE encourages the school to advise the student about how the disbursement may affect his or her eligibility for additional Title IV aid and caution the student about loan debt. A school may do this in the offer it makes to the student, i.e., the notice a school sends to the student offering the proceeds of a late disbursement.	
LEAVE OF ABSENCE *(Approved)*	November 1, 2002 p. 67058, 67073 August 8, 2002 (NPRM) p. 51726, 51738 34 CFR 668.22(d)(1)(vi)	Final rules allow multiple approved leaves of absence during a maximum of 180 days within a 12-month period, but eliminate the current criteria for multiple approved leaves of absence, i.e., jury duty, military reasons, or circumstances covered under the Family and Medical Leave Act of 1993. The current requirement for a student to submit a written leave of absence request is modified to include a new stipulation that the student must state a reason for the leave of	Both the NPRM and Final Rule preamble provide detailed clarification about the impact of these final rule changes, as discussed below. At the request of the financial assistance community, USDE clarified in the proposed rule preamble its position regarding *students on*	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes. I

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		absence. Except for non-term credit hour and all clock hour programs, a leave of absence is considered an approved leave of absence (negating the need to treat the student as withdrawn) for Title IV purposes only if the student is permitted to complete the coursework he or she began prior to the leave of absence.	*approved leave of absence who are required to repeat prior coursework* in preparation for continuing in the original program of study. A student may be considered to be on an approved leave of absence if the school requires the student to repeat coursework upon the student's return from the leave, provided that the student does NOT incur additional institutional charges. While the student is repeating coursework, he or she is considered to be on leave of absence and is not eligible for additional Title IV funds. Since such a student is considered to be on a leave of absence while repeating prior coursework, if the student does not resume attendance at the point in the program where he or she left off before the leave of absence began, the student is treated as a withdrawal. The date of the withdrawal is the date the leave of absence began, NOT the date the student began repeated coursework. As a result, the student would not be eligible for any additional Title IV assistance for this preparatory phase, and would be considered to be on the approved leave of absence during the time he or she is repeating prior coursework. In the final rule preamble, USDE agreed with a commenter that additional flexibility could be afforded to students who take a leave of absence from a non-term credit hour or clock hour program. These students may be considered to be on an approved leave of absence if the student returns to	A school must apply the new rules to all students who are granted a leave of absence on or after the date the school implements the new rules.

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			begin a new course, provided the student does NOT incur additional institutional charges. Other than the two exceptions outlined above, a student is considered to be on an approved leave of absence only if the school allows the student to return from the leave and resume his or her program at the point when the leave began.	
LOAN LIMITS	November 1, 2002 p. 67066-67067, 67078 August 6, 2002 (NPRM) p. 51039-51040, 51052 34 CFR 682.204(a)(8)-(9)	Generally, students who enroll in a one or two academic-year program may not borrow more than the grade level one or grade level two annual loan limit, respectively.	In both the proposed and final rule preambles, USDE states that previous regulations in 682.204(a)(2)(ii) and (d)(2)(ii) allow a student who is attending a program that is more than one academic year but less than two academic years in length to receive a prorated loan at the *second year grade level* during the final period of the program that exceeds the academic year. Schools may not link separate, stand-alone programs to allow students to be eligible for higher annual loan limits. A student attending an academic-year program "B" does not qualify for grade level two annual loan limits because the student was required to have previously completed one-year program "A" as a prerequisite for admission into program "B". These rules do not affect a school's ability to determine the number of years a borrower has completed based on hours earned at another school that are applicable to the program at a new school.	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.

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NOTICES	November 1, 2002 p. 67062, 67075 August 8, 2002 (NPRM) p. 51730, 51738 34 CFR 668.165(a)(3)	A school is currently required to notify a student or parent borrower that FFEL or Federal Direct Loan Program funds received via Electronic Funds Transfer (EFT) or master check have been credited to the student's account. That notice must include information about the borrower's right to cancel all or a portion of the loan. Previous regulations permitted that notice to be delivered to the borrower electronically, however, the school was required to obtain and retain confirmation that the student received the notice. The final rules eliminate the need for the school to confirm the receipt of this notice when it was provided electronically.	USDE expects schools to take seriously the student's right to reconsider his or her loan obligation by taking steps that reasonably ensure the student receives the notice. Generally, there is no difference in the regulations between the terms "in writing" and "electronically". Unless a particular regulation requires otherwise, a school may comply with a requirement that an activity be conducted "in writing" by conducting that activity electronically.	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.
OVERAWARD TOLERANCES	N/A	None. The financial assistance community requested that USDE consistently implement the $300 overaward tolerance for all Title IV programs. Currently the $300 overaward tolerance applies to FFEL and Federal Direct Loan Program funds only if the student's aid package includes FWS; otherwise, no tolerance is permitted. USDE declined to make this change, stating that it required amendment of the HEA.	N/A	N/A
OVERPAYMENT TOLERANCE	November 1, 2002 p. 67059, 67073 August 8, 2002 (NPRM) p. 51726-51728, 51738 34 CFR 668.35(c)(3)	Proposed rules establish an overpayment tolerance: a student who owes an overpayment of less than $25 in the Federal Perkins Loan Program or any Title IV grant program is not required to repay the overpayment and remains eligible for Title IV assistance. However, this overpayment tolerance may not be the result of any one of the following: • The application of the campus-based overaward tolerance • The remaining balance on an originally larger overpayment amount	The overpayment tolerance does not apply to amounts that a school is required to return to the appropriate Title IV program. If the school is responsible for an overpayment of *any* amount, it must immediately return the amount of the overpayment to the appropriate Title IV program. These regulations do not prevent a school from billing or otherwise holding a student responsible for the amount of an overpayment that the school returned. However, such a debt is not a Title IV debt. A school may choose to pay a *grant* overpayment on the student's behalf. If a school chooses to pay a student's	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.

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			grant overpayment, the USDE clarified (at a commenter's request) that written notice to the student need NOT be sent, because there is no longer any federal grant overpayment to collect. These proposed rules do not change the current rule that a school is not required to refer to the USDE a Federal Perkins loan overpayment, because all payments must be returned to the school's revolving loan fund. The proposed rules also do not change the fact that, under the return of Title IV funds calculation, Perkins Loans are not treated as an overpayment. The unearned amount that a student is required to return is repaid according to the loan's repayment terms.	
PAYMENT PERIODS*	November 1, 2002 p. 67052,-67053, 67071-67072 August 8, 2002 (NPRM) p. 51721-51722, 51736-51737 34 CFR 668.4(b), (e), and (f)	For credit hour programs ***without terms***, final rules define a payment period as the period of time needed for the student to complete not only one-half of the credit hours or academic coursework, but also one-half of the required weeks of instruction in any one of the following, as applicable: ♦ The academic year ♦ The program (if it is equal to or shorter than an academic year) ♦ The remaining portion of a program when the program is greater than an academic year in length, and the remaining portion of the program (i.e., the student's final period of study) is more than one-half of the academic year in length. For a student that withdraws from a clock hour or non-term credit hour program during a payment period: • If the student returns to the *same program and school within 180 days*, the student remains in the same payment period that he or she was in at the time of withdrawal. The student would have to complete the remaining clock or credit hours before	The USDE believes additional safeguards are necessary to prevent schools from structuring programs in such a way as to allow the second payment of Title IV aid for an academic year to be made before half of the academic year, as measured in weeks, has elapsed. This could happen if a 24 credit hour program was offered over a 30 week period but was structured so that the first 12 credits were earned over the first 10 weeks and the remaining 12 credits were earned over the last 20 weeks. In the final rule preamble, the USDE describes how a return of Title IV funds calculation would be performed if a student withdrew from a program during a payment period, returned to the same school and program within 180 days, and then withdrew a second time. If the student returns to the program	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.

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		starting a new payment period and receiving Title IV aid for a subsequent payment period. However, the school would redisburse any funds that it previously returned to the Title IV programs, including any funds that were returned by the school student under the return of Title IV funds rules. • If the student returns to the same program *after* 180 days, or *transfers* within *any* time frame *to another program at the same or another school*, the student begins a new payment period schedule. The length of the program, for the purpose of determining the new payment periods, is the number of credit hours and weeks, or the number of clock hours the student must complete to finish his or her program. If the remainder of a student's program is one-half of an academic year or less, that remaining period is one payment period.	within 180 days of his or her initial withdrawal, the student is placed in the same payment period he or she withdrew from. Any Title IV funds that the student or school returned to the Title IV programs or to a lender for that payment period as a result of the earlier withdrawal are restored to the student. If the student then withdraws from the school again during that same payment period, a new return of Title IV funds calculation, based on the second withdrawal date, would be performed using the full payment period and the full amount of Title IV aid for the payment period. Costs of attendance for a student returning to the same program at the same school within 180 days must reflect the original educational costs associated with the original period from which the student withdrew.	
PROMISSORY NOTES	November 1, 2002 p. 67064, 67080 August 6, 2002 (NPRM) p. 51038-51039 p. 51054 34 CFR 682.414(a)(5)(ii) 34 CFR 682.402(g)(1)(i)	Final rules clarify that if a promissory note was signed electronically, the guaranty agency or lender must store it electronically, and it must be retrievable in a coherent format. (A proposed rule cross-reference to acceptable storage options found in 668.24(d)(3)(i) through (iv) was deleted at the request of a commenter.) If a lender submits a copy of a promissory note with a claim payment request, it must be a true and exact copy. However, final rule changes delete the previous requirement for a lender to *certify* that the promissory note copy is true and exact.	No notable discussion.	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.
REFUNDS – RETURN OF TITLE IV FUNDS	November 1, 2002 p. 67063-67064, 67074-67075 August 8, 2002 (NPRM) p. 51730-51731	Previously, when a student withdrew, a school was required to return unearned funds that it was responsible for repaying within 30 days of the date the school determined that the student withdrew. Final rule changes provide the benchmark for measuring a school's compliance with this 30-day period, by defining when the USDE considers a return of funds to have	In the final rule preamble, the USDE describes Federal Reserve banking regulations that require a depository bank (in this case, the USDE or a FFEL Program lender to whom a school has returned funds via check) to evidence that it received a check by endorsing	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final

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	34 CFR 668.173(a) through (c)	been made to the USDE or a FFEL Program lender. Funds are returned when the school: • Deposits or transfers the funds into the bank account it maintains for Federal funds • Initiates an EFT to transfer the funds • Initiates an electronic transaction that instructs a FFEL Program lender to adjust a borrower's loan for the amount of the "returned funds" or • Issues a check. If a check is used to return funds, the final rules include a new stipulation that the check must be endorsed by a FFEL Program lender or the USDE no later than 45 days after the school determined that the student withdrew.	the check. Under these regulations, the bank's endorsement must include the routing number, the name of the bank, and the endorsement date. In the final rules the endorsement date, not the receipt date as originally proposed, is the benchmark used to determine whether a timely return of funds has occurred, i.e., whether funds the school repays by issuing a check within 30 days has been endorsed by the USDE or FFEL Program lender within 45 days of the date the school determined that the student withdrew.	rule changes.
REHABILITATION	November 1, 2002 p. 67060, 67073, 67080 August 6, 2002 (NPRM) p. 51037-51038, 51054 34 CFR 682.401(b)(4) 34 CFR 682.405(a)(1), (b)(1) 34 CFR 668.35(b)(2)	Borrowers who have a defaulted Title IV loan on which a judgement has been obtained will no longer be allowed to rehabilitate the loan. 34 CFR 668.35(b)(2) was updated to clarify that a borrower who is subject to a judgement on a Title IV loan may re-establish Title IV eligibility by paying the loan in full, or by making repayment arrangements that are satisfactory to the holder of the debt, provided those arrangements include at least six consecutive voluntary monthly payments. A borrower may regain Title IV eligibility under these provisions only once. Final rules in 34 CFR 668.35(b) incorporated an existing definition of "voluntary" payments that are required to regain Title IV eligibility, from the definition of satisfactory repayment arrangements in 34 CFR 682.200. Voluntary payments are those made directly by the borrower, not including payments obtained by Federal offset, garnishment, or income or asset execution. Proposed rules would have excluded judgement payments from the definition of "voluntary" payments required for regaining Title IV eligibility. However, this proposed rule language was deleted at the request of a commenter. See "NPRM or Final Rule Preamble Discussion."	None of the statutory sections that created the rehabilitation program (Section 428F of the HEA for the FFEL and Direct Loan Programs, Section 464(h) of the HEA for the Perkins Loan Program) require that rehabilitation be offered to borrowers against whom there is a judgment. A loan holder may exercise its option to enter into a repayment agreement with a borrower against whom it had obtained a judgment. For example, a holder could agree to vacate the judgment and request that the default be removed from the borrower's credit history if the borrower made 12 consecutive monthly payments and signed a new promissory note. Payments made as the result of a judgement are not excluded from the series of "voluntary" payments that a defaulted borrower must make in order to regain Title IV eligibility if the borrower who is subject to the judgement makes a payment directly to the judgement holder. There is no	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.

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			requirement that the payment amount be greater than the amount required on the judgement.	
REPAYMENT	1. November 1, 2002 p. 67078 August 6, 2002 (NPRM) p. 51044, 51052 34 CFR 682.209(a)(8)(iv) 2. N/A	1. Final rules eliminate the need for a written request when a borrower whose repayment term is less than five years wishes to extend the repayment term to five years or more. 2. None. Currently, FFEL Program lenders are not permitted to establish repayment schedules under the graduated or income-sensitive repayment plans that require any one payment to be more than three times the amount of any other payment. This change would have permitted any single payment to be as much as five times any other payment. However, USDE estimated that such a change would increase costs to the federal government and therefore declined to give the proposal further consideration at this time.	1. No notable discussion. 2. N/A	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes.
WITHDRAWAL DATE	November 1, 2002 p. 67073 August 8, 2002 (NPRM) p. 51725 34 CFR 668.22(b)(3)(i)	Final rules clarify when schools are "required to take attendance" for the purpose of applying the withdrawal date definitions in 34 CFR 668.22. USDE's prior guidance (GEN-00-24) states that if the only way a school can comply with a requirement of an outside entity (such as the school's accrediting agency or a State agency) is to take attendance, the school is considered to be one that is required to take attendance. The final rules make it clear that a school is considered to be one that is required to take attendance only when an outside entity determines, i.e., specifically requires, the school to take attendance for some or all of its students, even for a limited period of time.	If an outside entity has a requirement, as determined by the entity, to take attendance for a single day such as attendance for census purposes, that single event would not cause the school to meet the definition of a school that is required to take attendance. However, when, through a census on a certain date or similar process, all of a student's instructors indicate that the student is no longer in attendance, the *student is considered to have officially withdrawn as of the census date*. Additionally, when a school administratively withdraws a student from all of his or her classes, the student is considered to have officially withdrawn as of the date of that administrative withdrawal. This guidance applies regardless of whether	Generally, July 1, 2003. However, the USDE authorizes implementation as early as November 1, 2002, the publication date of these final rule changes. A school must apply the new rules to all students who withdraw on or after the date the school implements the new rules.

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			or not the school is required to take attendance. If a school determines that a student is not in attendance at the end of a limited period of required attendance-taking, the student's withdrawal date is determined according to the requirements for a school that is required to take attendance, i.e., the withdrawal date would be the last date of academic attendance according to the required attendance records the school obtained for the limited period. If a school demonstrates that the student attended after the end of the limited, required attendance-taking period and the student subsequently, unofficially withdraws, the student's withdrawal date is the midpoint of the payment period, unless the school chooses to use a documented last date of attendance at an academically-related activity.	

***Negotiated rulemaking Team 2 failed to reach consensus on the 12-hour rule and incentive compensation proposals that were part of the Team's agenda. The USDE ruled that the disagreement led to the failure to agree on the entire package of proposed rule topics that Team 2 addressed. Although there was tentative agreement on a number of other items on Team 2's agenda, the USDE declined to separate these items to preserve the integrity of agreements already achieved. Therefore, USDE was free to develop a Notice of Proposed Rulemaking (NPRM) relating to the program issues Team 2 addressed without regard to conceptual or language decisions reached during negotiated rulemaking discussions. The USDE stated that it considered information and clarifications shared in Team 2 meetings to prepare the NPRM.**